

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY  
RM 9474

In the Matter of )  
 )  
The Development of a National Framework to )  
Detect and Deter Backsliding to Ensure )  
Continued Bell Operating Company Compliance )  
with Section 271 of the Communications Act )  
Once In-Region InterLATA Relief is Obtained )

**COMMENTS OF RCN TELECOM SERVICES, INC.**

RCN Telecom Services, Inc. ("RCN"), by undersigned counsel, submits these comments concerning the above-captioned Petition<sup>1</sup> filed by Allegiance Telecom, Inc. requesting that the Commission establish a national framework to detect and deter backsliding by Bell Operating Companies ("BOCs") once interLATA authority is granted pursuant to Section 271 of the Communications Act of 1934, as amended.<sup>2</sup>

RCN, by itself and through various affiliations, is a facilities-based competitive provider of local exchange and long distance telephone services, high-speed Internet access, and traditional franchised cable and/or OVS services, primarily to residential subscribers. RCN's business plan emphasizes the residential market and is structured to offer consumers a combination of local exchange and long distance telephone service, high-speed Internet access, and traditional cable or OVS services in one convenient offering.

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<sup>1</sup> Petition for Expedited Rulemaking filed February 1, 1999 by Allegiance Telecom, Inc., RM 5474 ("Petition").

<sup>2</sup> 47 U.S.C. Section 271.

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List A B C D E

## **I. THERE IS A SIGNIFICANT RISK OF SECTION 271 BACKSLIDING**

In addition to the direct application to incumbent local exchange carriers ("LECs") of key market opening requirements concerning interconnection, access to unbundled network elements ("UNEs"), and resale under Section 251(c) of the Communications Act,<sup>3</sup> Congress, in Section 271, sought to achieve local service competition by providing an incentive for Bell Operating Companies ("BOCs") to open their markets to competition by permitting them to provide interLATA service once they have complied with the competitive checklist of Section 271(c)(2)(B).

However, once a BOC has gained interLATA authority it will have no incentive to continue to comply with the requirements of the competitive checklist. The Commission has recognized that interLATA entry would eliminate BOCs' incentives to comply with the competitive checklist.<sup>4</sup> Moreover, a BOC that is authorized to provide interLATA service will have a heightened incentive to discriminate against competing interexchange carriers. In addition, RCN submits that BOCs' are not attempting to comply with Section 271 by bold market opening moves that could satisfy Section 271, but instead are attempting to gain interLATA entry by the smallest possible steps, or by means of "nose under the tent" interLATA relief petitions that could set a precedent for widespread entry later.<sup>5</sup> SBC has even attempted to gain in *Request by Bell Atlantic-West Virginia*

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<sup>3</sup> 47 U.S.C. Section 251(c).

<sup>4</sup> *Petitions for LATA Association Changes by Independent Telephone Companies*, CC Docket No. 96-158, Memorandum Opinion and Order, 12 FCC Rcd 10529 (1997). *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, CC Docket No. 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646 (1997).

<sup>5</sup> *See Joint Petition of the State of Nebraska and USWest Communications, Inc. for Targeted InterLATA Relief*, File No. NSD-L-99-04, Public Notice (rel. Feb. 9, 1999); *Request by*

*for Interim Relief Under Section 706, or, in the Alternative, a LATA Boundary Modification*, Public Notice, DA 98-1506 (released July 28, 1998). terLATA entry without any compliance with Section 271 by seeking to have Section 271 declared unconstitutional.<sup>6</sup> Accordingly, RCN submits that there is genuine risk that once a BOC gains interLATA entry it will seek to evade or thwart compliance with the requirements of Section 271.

## **II. BACKSLIDING WOULD HARM COMPETITION**

A diminution in the level of compliance by a BOC with the competitive checklist and other requirements of Section 271 after it gains interLATA entry would have a substantial deleterious impact on competition. For example, BOCs generally provide competitive LECs access to competitive checklist items through access to, and use of, BOCs operations support systems ("OSS"). Discrimination in access to OSS could substantially impair the ability of competitors to obtain UNEs, unbundled loops, unbundled transport, 911 and E911 services, directory assistance services, operator services, directory listings, telephone numbers, and signaling networks and related databases.<sup>7</sup> The ability to use a BOC's OSS on the same terms and conditions as the BOC uses in its own provision of service is essential to competitive LECs' ability to compete successfully in the local service market, and discriminatory access to OSS could produce substantial disadvantages in

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*Bell Atlantic-West Virginia for Interim Relief Under Section 706, or, in the Alternative, a LATA Boundary Modification*, Public Notice, (rel. July 28, 1998).

<sup>6</sup> *SBC Communications, Inc. v. FCC*, 981 F.Supp (N.D. Texas 1997), *rev'd* *SBC Communications v. FCC*, 13 Communications Reg. (P& F) 458 (5th Cir. 1998).

<sup>7</sup> See 47 U.S.C. Section 271(c)(2)(B)(ii), (iv)-(xi).

competitors' ability to provide adequate and timely levels of service essential to effective competition. Accordingly, RCN submits that a BOC's evasion or minimization of compliance with the competitive checklist once it is authorized to provide interLATA service could have devastating impacts on competition and achievement of the pro-competitive goals of the Act.

### **III. RULES DESIGNED TO DETECT AND DETER BACKSLIDING SHOULD BE INCLUDED AMONG THE COMMISSION'S PRO-COMPETITIVE REGULATORY TOOLS**

RCN believes that any Section 271 approvals should be appropriately conditioned on compliance with backsliding safeguards including any measures developed as an outgrowth of this proceeding. However, the 90 day time period for consideration of Section 271 applications is not likely to provide the Commission enough time to develop sufficient backsliding safeguards. Therefore, the Commission should begin promptly to develop those safeguards as requested in the Petition.

Further, rules of broad applicability are most likely to be effective in promoting the pro-competitive goals of the Act which Congress intended to be achieved everywhere. At the same time, adoption of rules will not foreclose states, or the Commission, from establishing supplementary backsliding safeguards in the context of individual BOC applications for interLATA entry. RCN submits that the Commission is most likely to detect and deter backsliding if it establishes safeguards and standards as envisioned in the Petition and then addresses by means of supplementary conditions on individual applications any special circumstances requiring safeguards tailored to a BOC's offering of interLATA service in a specific state.

#### **IV. THE PROPOSALS IN THE PETITION SHOULD BE OFFERED FOR COMMENT**

The Petition identifies important and valuable backsliding measures that the Commission should propose and offer for comment. The Commission should establish verifiable national minimum standards for BOCs' provision of each of the checklist items. These standards should address and define acceptable access to OSS, interconnection, collocation, access to rights of way and intra-building wiring, among other areas. These standards, properly crafted and combined with monitoring and detection measures, could help assure that BOCs continue to comply with Section 271 requirements after interLATA entry. The Commission should obtain a complete record on state efforts concerning Section 271 safeguards to date to serve as a foundation for consideration of appropriate safeguards.

RCN supports the establishment of special procedures for the Commission to entertain complaints concerning BOC violations of Section 271 requirements and backsliding measures. The importance of Section 271 requirements to achieving a competitive market for provision of local telecommunications services, and the harm to competition that could be caused by backsliding, warrants the institution of a special administrative and regulatory program to resolve such complaints. Congress recognized the importance of Section 271 compliance when it provided that the Commission must resolve complaints concerning Section 271 within 90 days.<sup>8</sup>

RCN also believes that appropriate penalties for violations of Section 271 requirements should be a part of the Commission's backsliding safeguards. The three tier approach suggested in

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<sup>8</sup> See 47 U.S.C. Section 271(d)(6).

the Petition to address increasing levels of violations comprised of UNE price reductions, suspension of Section 271 authority to serve new long distance customers, and fines is appropriate.

## **V. THE COMMISSION HAS AUTHORITY TO ESTABLISH BACKSLIDING SAFEGUARDS**

Section 271(d)(6) of the Act expressly provides the Commission continuing regulatory authority to enforce BOC compliance with the competitive checklist after BOC in-region, interLATA authority is approved.<sup>9</sup> Thus, under this provision the Commission may, if it determines that a BOC has ceased to comply with its obligations under Section 271, issue an order directing the BOC to correct the deficiency, and impose appropriate penalties including suspension or revocation of interLATA authority.<sup>10</sup> RCN submits that the regulatory measures proposed in the Petition fall within the scope of this authority. In addition, the Supreme Court in *AT&T Corp. v. Iowa Utilities Board* made clear that the Commission possesses overarching authority to implement the local competition provisions of the Act. Accordingly, the Commission has ample authority to establish the requested backsliding safeguards.

## **VI. BACKSLIDING SAFEGUARDS MUST BEGIN WITH FULL INITIAL COMPLIANCE WITH SECTION 271**

Although the Commission should promptly institute a rulemaking to establish backsliding measures, this should not lead to regulatory complacency concerning initial compliance with Section

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<sup>9</sup> See 47 U.S.C. § 271(d)(6).

<sup>10</sup> *Id.*

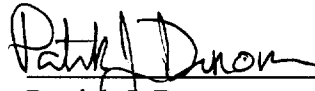
271 requirements. The competitive checklist and other requirements of Section 271 are essential to achieving local service competition and backsliding safeguards will not help achieve the goals of the Act if the starting point of interLATA entry does not strongly promote competition. RCN urges the Commission to insist on a full effectuation of the requirements of Section 271 as a precondition to any interLATA entry.

## VII. CONCLUSION

For these reasons, RCN respectfully requests that the Commission grant the Petition.

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**CERTIFICATE OF SERVICE**

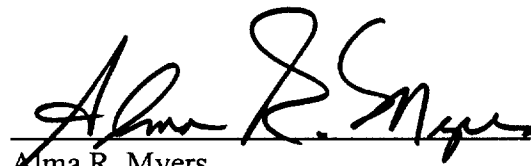
I hereby certify that on this 8th day of March 1999, copies of the foregoing COMMENTS OF CTSI, INC. IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING, were served via Messenger\*\* or U.S. Mail, postage prepaid, upon the following parties:

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